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# EUROPEAN CITIZENSHIP AND THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

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## **1. The origin and significance of European citizenship. The complementary character of the european citizenship**

Specific rights, similar to those that democratic states guarantee for their citizens were not explicitly present in the European Communities created in the '50s, as their official purpose was officially a purely economic one. Hence, the first attempts to create such rights are to be found only in the '80s, when the European Parliament advanced the idea of creating a Union citizenship, as part of a Constitutional Treaty, known as the "Spinelli Treaty". Although the EP project was not approved by the member states, these were aware of the fact that their citizens wanted more than the existing economic community and decided, with the occasion of the 1984 Fontainebleau European Council, to create an ad-hoc Committee (known also as the "Adonino Committee") named "Citizens' Europe". Following the internal debates of the committee, a proposal concerning the anthem of the EU, the flag and the single passport for EU citizens was drafted<sup>2</sup>.

The creation proper of the Union citizenship, i.e. the establishment of a political and juridical relationship between the EU as an international law subject and the citizen, as a natural person bearing rights and responsibilities, was realized through the 1992 Maastricht Treaty.

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<sup>2</sup> JOCE C 241, 19.09.1981, C 179, 26.07.1982, DO C 303, 27.11.1986

Ever since, the EU citizenship holds a central place in the Treaties, the Preamble of the TEU establishing the creation of a common citizenship for the citizens of the member states, one that was meant to strengthen the protection of their rights. Consequently, article 20 of the TFEU highlights that:

*“Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union.”*

On the one hand, the establishment of a EU citizenship finally overcame the economic hurdle and led to the birth of a political union. On the other hand, this process created a new juridical institution serving the citizen and enabling the exercise of his rights outside his national state.

In relation to the national citizenship, the EU citizenship has a complementary and not a substitutive character<sup>3</sup>. Therefore, EU citizenship does not replace or eliminate the national citizenship. On the other hand, having a national citizenship is a *sine-qua-non* condition of obtaining EU citizenship. Nevertheless, this is only a necessary condition, because becoming a citizen of a member state is a process conditioned by the internal norms and laws freely adopted by the member state – thus the withdrawal or bequesting of the EU citizenship depends on the relation of every citizen with his national state.

The fact that a European citizen gains new rights by becoming a citizen of the Union does not mean that his other rights, pertaining to the national citizenship, are lost or diminished, but that, outside his state of origin and as long as he is inside the EU’s borders, he enjoys equal or similar rights to the citizens of his residence or “destination” state.

Furthermore, if he is outside the borders of the EU, by means of the rights guaranteed by the EU citizenship, he enjoys the protection of the diplomatic missions of every EU state which has a mission in that particular state, regardless of whether the national state whose citizenship he holds has a diplomatic mission there. Moreover, since the EU has gained juridical personality through the Lisbon Treaty, becoming a fully developed international law subject, it will open 160 personal diplomatic missions in non-member states, which can also represent EU citizens in these countries. At the same time, these EU diplomatic missions may accredit diplomats of the EU countries that do not wish to open national diplomatic missions, but wish to be represented at bilateral level and, among others, to ensure the consular protection of their own citizens residing or travelling to such countries.

Of course, the citizens of the European Economic Communities have been enjoying common economic and social rights since the ‘50s. Regardless of the national state they come from, a juridical relationship between the citizens

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<sup>3</sup> Article 9 TEU and article 20 TFEU

of the member states and the Union exists, which has eliminated the exclusive character of the traditional juridical relationship between the state and its citizens.

We can therefore argue that in this case, we are dealing with a double:

- Identity (national vs. European)
- Allegiance (the national state vs. the European Union)
- Affiliation (state vs. the European Union)
- Responsibility (the national state vs. the European Union)

## **2. The juridical status of EU citizenship**

Some rights of EU citizens, such as free movement or free residence have existed since 1951, but only as rights associated to the undertaking of economic activities in another member state than the one of origin. The issue most often concerned rights deriving from the right of free movement of persons. What the Maastricht Treaty added and what the Lisbon Treaty developed (including the Charter of Fundamental Rights of the EU) was the generalization of these two rights, which were no longer associated only with economic activities and gained a more general applicability.<sup>4</sup> The right to free movement and residence thus became a universal right associated to the clauses of nondiscrimination on nationality.

Therefore:

- On the one hand, new rights, equal for all EU citizens, are created outside the sphere of national rights;
- On the other hand, the rights of citizens in one particular member state are extended to the citizens of other EU states residing on the first state's territory.

The rights established by the Charter are not opposable to those established by the Lisbon Treaty. The interdiction of "opposability" does not entail that other rights than those mentioned cannot exist and, for that reason, aside from the rights specifically mentioned in the treaties, there are some only mentioned by the Charter, such as the right to a good administration, to work, to access social security and social assistance, the right of access to EU documents, the right to petition EU institutions, the obligation of the administration to give reasons for its decisions, the right to a fair compensation for losses caused by EU authorities<sup>5</sup> etc. We emphasize that:

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<sup>4</sup> Articles 18 and 20 of the TFEU.

<sup>5</sup> For further reference concerning these rights, see articles 15.2, 4.2, 41.3 of the Charter.

- Under article 6 of the TEU, respecting these fundamental rights is mandatory.

### **2.1. Free movement and residence. Non-discrimination on grounds of nationality**

The right is mentioned in article 21.1 of the TFEU, which argues that

*“Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States”.*

As I was arguing, the right had existed since 1951, when, under the ECSC Treaty, the right of free movement and residence in every member state was guaranteed, regardless of whether it concerned waged labour, businesses or services. In 1957, the Rome Treaty re-emphasized these rights, considering them associated to the establishment of the European Economic Community. In the ‘70s these rights were extended to the families of the persons in question, thus ensuring that the members of such families could travel and establish their residence in one of the countries where another member undertook legally permitted activities.<sup>6</sup> There were situations that allowed hosting states to limit the stay or the residence rights on grounds of health and/ or public safety (epidemics, terrorism etc.)<sup>7</sup>. The same Directive 2008/38 argued that these rights extended to retired workers, invalid persons, students, as well as those who could generally produce evidence of possessing the material means to live abroad. The existence of medical insurance was also important.

To put it differently, the juridical basis was represented by the principle of non-discrimination, and the objectives were, at least initially, of an economic nature. After 1992, the juridical basis of this fundamental freedom became a “constitutional” one with its generalization to all of the EU’s citizens, regardless of whether they were undertaking an economic activity or not, or if they had relatives engaging in such an activity. The right to free movement and residence therefore became a sort of “natural right”, this being the reason for which we are calling it a “constitutional” one.

Ever since the beginning of the Economic Communities, the four freedoms entailed the elimination of any form of discrimination based on nationality. In other words, a citizen of a member state residing in another member state, cannot be discriminated against by the public authorities or by

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<sup>6</sup> EU Council, *Regulation 1612/68*, DO L 257/1968 and 1251/70, DO L 142/70, but also CJEU, Decisions of 30 September 1975, *Casagrande*, 32/75 and of 15 January 1986, *Pina*, 41/84.

<sup>7</sup> See *Directive 2004/38*, DO L 158, 2006, but also CJEU, Decisions of 4 December 1974 *Van Duyn*, 41/74, of 19 January 1999, *Donatella Calfa*, C-108/96, of 26 November 2002, *Ministre de l’Interieur vs Oteiza*, C-100/01.

the private persons of the state he is currently residing in. There is also an important debate concerning the status of such a citizen: is he a “stranger” or not? The general opinion is that citizenship of the EU eliminates the “stranger” label for EU citizens residing in another member state. Besides, the Court of Justice of the European Union has established an impressive jurisprudence favorable to the recognition of the free movement and residence rights understood as fundamental rights<sup>8</sup>. In other words, a Romanian citizen in France, for example, is not a “stranger” and not an immigrant, but a citizen of the Union free to travel and reside in France. The well known exceptions related to “public safety and security”, on the basis of which France expelled groups of Bulgarian and Romanian Roma are in clear contradiction with the aforementioned arguments, highlighting the abuse of the French authorities<sup>9</sup>. Such entrenchments have been committed before, according to the Decisions of the CJEU<sup>10</sup>.

## **2.2. The right to take part in the political life of the country of residence**

The juridical establishment of this right was made through the Maastricht Treaty, causing important debates and even Constitutional amendments in countries such as France or Spain.

These rights are represented, traditionally, through the right to run and be elected in local and European Parliament Elections. Furthermore, the Lisbon Treaty refers to the citizens’ right of legislative initiative. The manifest representative democracy thus becomes a participative democracy.

In case of the first rights, article 22 of the TFEU establishes that:

*“Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State”.*

This right derives from the right to free movement and residence, the European lawmakers finding it natural to have the right to vote on the development of the place where one lives and works, even when that place is not within the state of origin, but does lie inside the EU borders.

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<sup>8</sup> CJEU, Decisions of 6 June 2000, *Angonese*, C-281/98, of 12 February 1974, *Sotgiu*, 152/73, of 30 May 1980, *Allue*, 33/88 etc.

<sup>9</sup> An excellent analysis on this subject is BARBULESCU, H. “Securitzarea societală și comunitatea politică în Uniunea Europeană. O analiză a expulzării romilor din Franța”, Ph.D thesis defended at the NSPAS in 2011.

<sup>10</sup> CJEU, Decisions of 6 June 2000, *Angonese*, C-281/98, of 12 February 1974, *Sotgiu*, 152/73, of 30 May 1980, *Allue*, 33/88 etc.

Through the TEU and afterwards, through the Council's Directive no. 94/80/CE, the manner of exercising this right was established. Thus, it was decided that the conditions of exercising the active and passive vote will be the same for all citizens, nationals<sup>11</sup> or residents<sup>12</sup>; therefore, the same minimum voting age will apply for both categories, as well as the incompatibilities and the prospective exclusions from voting as a result of civil or criminal sentences. The conditions of financing the electoral campaigns, the way of organizing them etc. are subject to the same rules. In other words, the resident does not have lesser rights than the national, but he also cannot use the fact that he is living and working in another state to invoke rights existing in the state whose national he is, but not in the state where he resides.

As it is the case with a complementary right, the resident citizen that wishes to vote in the country he resides in must notify the authorities of his request, by registering voluntarily in the Electoral Register.

Through the Lisbon Treaty, the proceedings of the afore mentioned Directive are amended, establishing that<sup>13</sup>: *"The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights"*.

For the moment, the EU is functioning on the basis of the existing Directive.

As to the elections for the European Parliament, we start from article 10 of the TEU which acknowledges the right of every citizen to partake in the democratic life of the EU: *"Every citizen has the right to partake to the democratic life of the Union. The decisions are taken openly at a level closest to the citizen."*

Furthermore, the right to take part actively or passively in the EP elections organized in the residence state is guaranteed, regardless whether the citizen is a national or a resident in that particular state, as long as he is the national of a member state of the EU: *"Every citizen shall enjoy the right to vote and to stand as candidate in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State"*<sup>14</sup>.

These provisions of the TEU were given specificity by the Directive 93/109/CE<sup>15</sup>.

As in the case of local elections, different details concerning the financing and running of the electoral campaigns or the voting age threshold etc. are established. One of the most important provisions regards the ban on exercising the right to vote in both the national and the residence state. Thus, in

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<sup>11</sup> Those who have the citizenship of that particular state.

<sup>12</sup> Those who work and live in that particular state, but are not its citizens.

<sup>13</sup> Article 22.1 of the TFEU

<sup>14</sup> Article 22 of the TFEU

<sup>15</sup> DO L 329/30.12.1993

order to elect representatives or to run for office, one has to register with the electoral authorities of that particular country. If the citizen does not register, it is presumed that their desire is to vote or to run for office in the country whose nationality it has.

The first elections for the European Parliament organized in compliance with these rules were those of 1994. While the number of residents voting in their country of residence increased constantly ever since, it still remains a small proportion out of the total number of EU residents.

Of course, this right entails certain adjacent rights, such as the right to freely associate, freedom of speech etc.

When considering the citizen's right to initiate legislative proposals, by assembling 1 million signatures from a plurality of member states, we have to consider that the Lisbon Treaty stipulates that this initiative

*Can be submitted in writing to the Commission, without defining the latter's obligation to draft a legislative proposal. In other words, the Commission can make a note of that particular citizen suggestion or can draft a legislative proposal*<sup>16</sup>.

The legislative power proper belongs to the Council and to the EP. The concrete steps of organizing this important extension of the citizens' political rights are established through the "Green Card for European Citizen Initiative" adopted on 11 November 2009<sup>17</sup>.

Of course, European legislative proposals must take into account EU's sphere of competences.

### **2.3. The right to protection outside the borders of the EU**

They concern the right of every citizen of a member state of the EU to be supported by any means (pecuniary, juridical, consular or diplomatic assistance etc.) by the diplomatic missions of other countries than that of origin, in cases when his country of origin does not run diplomatic missions in the country where he requires assistance: *"Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State"*<sup>18</sup>.

This provision of the Maastricht Treaty was developed by the Decision 95/353 of 1995<sup>19</sup>. The Lisbon Treaty later argued that the aforementioned provision can be amended by the Council through the special legislative procedure of unanimous vote with the preliminary approval of the

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<sup>16</sup> Article 11 of the TEU and article 24 TFEU

<sup>17</sup> EUROPEAN COMMISSION, COM 2009 (622) final

<sup>18</sup> Article 20 of the TFEU

<sup>19</sup> The Council, Decision 95/353/19 December 1995, DO L 314/1995



EP<sup>20</sup>. For the time being, this provision at least compels the diplomatic mission a citizen is addressing to offer assistance in case of death, accident, severe illness, arrest, detention, and any other situations in which a citizen of the EU finds himself under duress. Naturally, the money spent by that particular mission are to be returned by the state whose nationality the citizen in question has.

#### **2.4. The right to address the eu institutions and authorities. The right to petition the ep and the ombudsman. The right to access eu documents**

The EU citizens enjoy the right to:

- Address any EU institution<sup>21</sup>, in any official language of the Union;
- To receive a reply in the same language.

This provision is meant to bring the Union and its institutions closer to the citizens and their interests.

By means of this provision, the citizens may transmit to the common institutions of the EU their desires and complaints. The Charter of Fundamental Rights of the European Union establishes<sup>22</sup> that citizens “must receive a reply”, unlike the previous stipulation, which argued only that the citizens “may receive” a reply from the European institutions.

If we add the legal obligation of respecting the provisions of the charter to the previous elements, we notice that this is another step made towards the democratization of the EU’s institutions.

As to the citizen’s right to petition the European Parliament, it is enshrined by articles 20 and 24 of the TFEU. The right was regulated before, the only difference being that its juridical basis was the Internal Regulation of the EP, which stipulated that any citizen can address the EP’s Petition Commission. The current definition concerns all natural and juridical persons. If the petition concerns the Union’s sphere of competence, hearings and visits can be organized, documents can be asked for as well as the drafting of an official position by the Commission. Finally, the presentation in front of the Plenum of the EP of a Report containing the measures adopted by the Commission and/or the Council becomes mandatory.

The same articles 20 and 24 govern the right of Union’s citizens to address the Ombudsman. Decision 94/263<sup>23</sup> adopted by the EP and approved by the Council and of the Commission, modified by the EP’s decision of March

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<sup>20</sup> Article 23 of the TFEU

<sup>21</sup> Article 20 of the TFEU

<sup>22</sup> Article 41 of the Charter

<sup>23</sup> DO L 113/4.05.1994

2002<sup>24</sup>, argues that any natural or juridical person residing or having a social residence in the EU can address the Ombudsman. The request is made in causes relating to bad administration (abuse, administrative irregularities, negligence, discrimination, unjustified delays, lack of information etc.) carried out by Union institutions and agencies, with the exception of the Court of Justice. In other words, the Ombudsman is a mediator between the EU's citizens and its institutions. At the request of a citizen as well as on its own initiative, the Ombudsman can undertake the actions it deems necessary. The complaint must be submitted no later than two years after the incriminated facts were known, can be written in any official language of the Union, is considered a public document and can be treated as confidential on request. If the Ombudsman ascertains a defective functioning of a EU institution, he informs that particular institution and asks it to re-enter the limits of the law. The EP and the petitioner are informed. At the end of every year, the Ombudsman drafts an annual Report, which may include recommendations for the EU institutions and which is presented in the EP Plenum.

The activity of the Ombudsman has contributed to the elaboration of a true administrative code which appears in the Charter<sup>25</sup> and which establishes that a good administration requires common institutions which treat every citizen equally, impartially fairly and which solve the problems in a reasonable amount of time. The petitioners must be given the right to a hearing and the right to access the documents concerning their case. As for the administration, it must motivate its decisions thoroughly.

The activity of the Ombudsman also contributed to the development of the citizen's right to access EU documents, an explicit stipulation of the Amsterdam Treaty which reappeared in the Lisbon Treaty<sup>26</sup>. Access to documents must be as wide as possible, the EP and the Council, as well as any other European institution setting up specific procedures. As for the Commission, the Council and the EP, they are functioning based on a common rule, adopted in 2001<sup>27</sup>. There are also limits of access to EU documents, such as the cases in which public safety, international relations, judicial procedures, commercial secrets, financial interests of the EU or the secret of deliberations inside the Council are concerned.

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<sup>24</sup> DO L 92/9.04.2002

<sup>25</sup> Article 44 of the Charter

<sup>26</sup> article 15 TFEU

<sup>27</sup> DO L 145/31.03.2001

## **2.5. The incomplete and open character of citizenship**

Once in every 3 years, the European Commission drafts a Report, concerning the Union's citizenship. The member states acknowledge the incomplete and open character of the Union's citizenship and agree with the further developments brought about by the open character of the Union<sup>28</sup>. Naturally, the existence of a codified EU citizenship does not signify the unconditional surrender of nationalism. It seems nevertheless certain that the strengthening of the European citizenship, of the feeling of belonging to a Union without losing one's national identity, but by adding a supra and trans-national one, i.e the European one, contributes to the development of a feeling of affiliation to a wider territory and culture, as well as to an increased understanding between European peoples and to the elimination of the racism and xenophobia that have affected the "Europe of nations".

## **3. The Lisbon Treaty and the charter of fundamental rights of the European Union**

By entailing rights and responsibilities concerning the political sphere, the Union's citizenship aims to strengthen the image and identity of the European Union, as well as to involve the citizen more directly in the process of European integration<sup>29</sup>.

The EU citizenship does not substitute national citizenship, but only adds the aforementioned rights to it. After the ratification of the Lisbon Treaty, through which the EU became a subject of international law, on the one hand, and the Charter of Fundamental Rights of the European Union becomes mandatory, on the other hand, the EU citizenship becomes paramount. It is for this precise reason, in our opinion, that it would be hard to discuss the concept of EU citizenship without debating the values of the Charter of the fundamental rights of the EU.

The decision to draft such a document was taken at the Köln European Council of 3-4 June 1999<sup>30</sup>. The purpose was the concentration of all the fundamental rights existing at EU level in a single document, in order to increase the public awareness regarding these rights.

The Charter of Fundamental Rights of the EU was solemnly adopted at the Nice Council of 7 December 2000 and was based upon:

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<sup>28</sup> Article 25 of the TFEU.

<sup>29</sup> I.Gh. Bărbulescu, D. Rapan, *Dictionarul explicativ trilingv al Uniunii Europene*, Polirom, 2009

<sup>30</sup> European Union, Consiliul European, Concluziile Presedintiei, Köln, 1999, [www.ue.eu.int/summ.htm](http://www.ue.eu.int/summ.htm)

- The EU and EC treaties;
- International conventions (such as the European Convention on Human Rights adopted in 1950 and the Charter of the Workers' Fundamental Social Rights adopted in 1989) ;
- The common constitutional traditions of the member states;
- Numerous acts of the European Parliament.

The 54 articles of the charter define the fundamental rights of: dignity, freedom, equality, solidarity, citizenship and justice.

Whereas the ECHR (European Convention on Human Rights) protects only the civil and political rights, the Charter includes several other rights, such as the workers' social rights, the protection of data etc.

With the adoption of the Lisbon Treaty, the provisions of the Charter of Fundamental Rights were incorporated into the text of the treaty, as an Annex to the Treaty. The incorporation of the Charter into the primary law of the European Union is accompanied by the EU's possibility of becoming, if the member states are willing, a part to the Council of Europe and the ECHR. Up to that moment, this perspective was not taken into account, because all member states were part of the Council of Europe and the ECHR. The Lisbon Treaty leaves open the EU's possibility of placing itself inside the ECHR jurisdiction not through the indirect channel of member states, but at a community level<sup>31</sup>.

Regarding the EU's accession to the ECHR, the Justice Court of the EC, asked in 1994 to answer whether the EU can access the ECHR, responded that the EC cannot access the ECHR, because it does not have explicit competences in respect to the protection of human rights<sup>32</sup>. Subsequently, the Convention, based on the document drafted by the Westendorp Reflection Group, decided that on the contrary, the EU can access the ECHR, because the Constitutional Treaty specifies in Title II, which is contained the Charter, the specific human rights enforcement capacities of the Union. The Convention's decision was maintained for the Lisbon Treaty, because, as we know, compliance with the Charter is mandatory, even if it is only an Annex to the Treaty. Discussing this aspect, Aldecoa highlights that: *"Accession will not modify the capacities of the Union, defined by the treaties (...). The same requirements as those imposed to the states are established: the international control of the Union's observance of the fundamental rights of its citizens is established (...). The EU's accession to the ECHR implies an important moment in the development of the democratic dimension of the Union"*<sup>33</sup>.

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<sup>31</sup> I.Gh. Bărbulescu, *Procesul decizional in Uniunea Europeana*, Polirom, 2009

<sup>32</sup> CJEC, Decision of 28 March 1994, *Aderarea Comunitatii la CEDO*, 2/94

<sup>33</sup> Fr. Aldecoa Luzarraga, M. Guinea, Llorente, *Europa viitorului. Tratatul de la Lisabona*, Polirom, 2011

In addition to this, it must be emphasized that the accession to the ECHR is technically stipulated in “Protocol 8 concerning article 6, line 2 of the Treaty, concerning the European Union’s accession to the European Convention on Human Rights”<sup>34</sup> and it does not affect Union law or the capacities of the CJEU. Accession can be realized only with the unanimous approval of the Council and a favorable bill of the EP, coupled with the ratification of such a document by the member states<sup>35</sup>. At the same time, the Statute of the Council of Europe must be amended in order to allow the EU’s accession to the Council. One of the anticipated problems is the envisioned conflict between jurisdictions, a situation where, in my opinion, the experience of the European Council vs. States or the EU vs. States differends can offer a successful means of solving such problems.

Furthermore, one has to notice that the institutions which vocally called for the EU’s accession to the ECHR were the Commission<sup>36</sup> and the European Parliament<sup>37</sup>.

We are therefore dealing with a European citizenship based on certain principles, rights and provisions meant to ensure an increased participation of the European citizens. To this matter, four provisions of the Treaty are paramount:

- The acknowledgement of rights established by the *Charter of Fundamental Rights of the European Union*<sup>38</sup>;
- European citizenship, the equality of all citizens<sup>39</sup>;
- The functioning of the European Union on the basis of the democratic representativeness principle<sup>40</sup>;
- Ensuring the maintenance of dialogue and transparency between the Union and its citizens<sup>41</sup>.

Thus, a first level of analysis points to the fact that the European citizenship is a citizenship based on rights, specifically those mentioned by the *Charter of Fundamental Rights of the European Union* (TEU, article 6), to which several others, such as the social rights stipulated by the *European Social Charter* (Torino, 1961) and the *Community Charter of the workers’ fundamental social rights*

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<sup>34</sup> UNIUNEA EUROPEANA, *Versiune consolidata a Tratatelor. Carta drepturilor fundamentale*, Luxembourg, OPOUE, 2010

<sup>35</sup> Article 218, TFUE

<sup>36</sup> EUROPEAN COMMISSION, *Memorandum concernant l’adhesion des Communautés européennes a la CEDH*, 4 aPRIL 1979, Bul. CE, suppl. 2/79

<sup>37</sup> EUROPEAN PARLIAMENT, *Rezoluție asupra elaborării unei Carte a Drepturilor Fundamentale a Uniunii Europene*, 16.03.2005, A5-0064/2000

<sup>38</sup> Article 6 of the TEU

<sup>39</sup> Article 9 of the TEU

<sup>40</sup> Article 10 of the TEU

<sup>41</sup> Article 11 of the TEU

of 1989<sup>42</sup> are added. Therefore, *the Charter of Fundamental Rights of the European Union* is recognized by *the Lisbon Treaty* as the guarantee of all the rights of the citizens, its provisions effectively becoming *general principles of Union law*”<sup>43</sup>

A central aspect is the Lisbon Treaty’s recognition of the juridical equality between the text of the Charter and the texts of the European Union’s treaties: “*The Union shall respect the rights, liberties and principles established by the Charter of Fundamental Rights of the European Union on 7 December 2007, which enjoys the same legal value as the treaties*”<sup>44</sup>.

A first level of analysis concerns the fight against social exclusion and ensuring that the rights of all European citizens are observed. In this sens, the Charter represents an extensive list of adjacent rights the citizens of the European Union enjoy and the criteria which ensure their exercise. Thus: “*Any discrimination based on any grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited*”<sup>45</sup>.

These aspects are developed not only by the TEU (for example, in article 3 or article 9), but also by the TFEU, which discusses the European Union’s involvement in supporting and complementing the actions of member states in fields such as gender equality and fighting social exclusion (Article 151 of the TFEU): “*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail*”<sup>46</sup>.

Within this context, the fight against social exclusion and for the ensurance of social cohesion functions in close connection with the rights of the European citizens, as they are upheld by the Charter. The European Union’s definition of social exclusion entails the exclusion from the exercise of rights and civic participation. Those facing this condition for different reasons, such as poverty, have a reduced access to the labour market, low chances of earning a living and an inconsequential participation to the community’s life. Furthermore, “*Persons facing social exclusion have little access to power and decision-making bodies and thus often feel powerless and unable to exercise control over the decisions that affect their daily lives*”<sup>47</sup>.

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<sup>42</sup> Article 151 of the TEU

<sup>43</sup> Article 6 of the TEU

<sup>44</sup> Article 6.1. of the TEU

<sup>45</sup> The EUROPEAN UNION, *Versiune consolidata a Tratatelor. Carta drepturilor fundamentale*, OPOCE, Luxemburg, 2010, The Charter, article 21.1.

<sup>46</sup> Article 2 of the TEU

<sup>47</sup> The EUROPEAN COMMISSION, 2004, *Joint Report on Social Protection and Social Inclusion*, p. 10

In order to ensure social inclusion and cohesion, the respect of the citizen's rights and their active participation to the functioning of the European Union are crucial. Increasing the degree of representativity of institutions, as well as civic participation constitute an essential element of the Lisbon Treaty<sup>48</sup>.

Discussing these elements, i.e. the European citizenship and the rights deriving from it, professor Cezar Bîrzea<sup>49</sup>, argued, in a paper I consider essential for the understanding of the concept, that:

- *Citizenship originates in internal law and designates the juridical quality that enables a person to take part in the life of the state, to enjoy civil rights and to be at the same time subjected to specific responsibilities, such as mandatory voting or conscription.*
- *The concept of citizenship entails that the citizens of the European Union benefit as such from the same rights traditionally granted to citizens according to the internal juridical procedures.*
- *In the Constitutional Treaty<sup>50</sup>, an important aim is bringing the European Union closer to the citizens. The Maastricht Treaty, which aimed to accomplish the same objective, introduced the European citizenship in order to strengthen the existing relationship between the European Union and the citizens of member states.*
- *Citizenship is a complex process, which entails the continuation of a socially negotiated integration, which comprises all those presently living in Europe and which offers a landmark for the future.*
- *The European citizenship is governed by the Union's law; national citizenship belongs only to the national law.*
- *The European citizenship does not suppress the rights inherent to national citizenship. It just confers additional rights, exercised either at the union's level (such as the right to vote for or to run for the office of MEP), either at the member states' level (the right to vote or to run for office in the local elections in another member state).*
- *Nevertheless, certain elements of European citizenship can weaken the national citizenship, insofar as a resident from another member state is recognized rights which in the past had been reserved only for the nationals.*

The Treaty of Lisbon entails a consolidation of the provisions and basic principles concerning the manner of understanding and exercising European citizenship. Two levels of analysis are necessary:

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<sup>48</sup> I.Gh. Bărbulescu., O. A. Ion, A. Iancu, N. Toderaș, *Tratatul de la Lisabona: implicații asupra instituțiilor și politicilor românești, Studiu de impact, IER, București, 2010*

<sup>49</sup> C. Bîrzea, *Cetatenia europeana*, Politeia, 2005

<sup>50</sup> When professor Bîrzea's book was being published, the Constitutional Treaty, which was eventually replaced in 2007 by the Lisbon Treaty, was undergoing the ratification procedure. All the provisions concerning the issue of citizenship have been preserved by the Lisbon Treaty, therefore the author's arguments still hold true.

- Ensuring the respect of the citizens' and their representatives' rights inside the Union: for example, the Treaty entailed the adoption of new provisions and procedures in order to increase the democratic representativity of the EU, and to ensure the observance of the rights of the European citizens;
- The conception of the European Union: for example, the Lisbon Treaty reaffirms a series of rights previously recognised by the Charter of Fundamental Rights of the European Union, as well as the imperative of an active participation of citizens.

To sum up, we can argue that

- The vision of the European Union brings together several theoretical traditions explaining the concept of citizenship;
- Citizenship fundamentally refers to the recognition of affiliation to a particular community, in our case the European one. This affiliation is accomplished by the affiliation to the national communities within the EU member states: "*Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship*"<sup>51</sup>.
- European citizenship is instituted indirectly, through national channels, without substituting the national citizenship, but adding new dimensions to it;
- These new dimensions can be discussed from several perspectives, the theoretical interpretations being divided, as we have seen, along different categories:
  - Interpretations of the citizenship concept based on rights, including or not social rights (the liberal and social-democrat perspectives);
  - Those based on the idea of affiliation to a particular community and identity<sup>52</sup>;
- The European Union, through the *Lisbon Treaty* develops both traditions, its conception of citizenship being constructed by referring to both rights, and attempts to build a common European identity and community;
- For this reason, when we talk about the Union's citizenship we are speaking with necessity about democracy, rights, freedom, non-discrimination (primarily about that based on nationality) etc.

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<sup>51</sup> article 20 of the TFEU

<sup>52</sup> Ruth Lister, *Citizenship Towards a feminist synthesis*, in *Feminist Review*, No. 57, Autumn 1997, pp. 28-48



#### 4. European identity. Europeanization

The concept of European identity is closely linked to the concept of EU citizenship and, in this sense, Cezar Birzea argued that: *“European citizenship designs a new type of collective identity which culturally and politically links the member states, the member states and the institutions, the institutions and the supranational institutions of the EU. Unlike the cultural European identity, which entails the common history, value and cultural heritage of the European peoples, the European citizenship must be understood first and foremost as a political identity”*<sup>53</sup>.

In other words, we are dealing with a European identity represented by:

- the common political culture;
- common institutions;
- a common primary and secondary legislation;
- common values;
- common objectives.

We are dealing with:

- a common economic, political and social space;
- a common currency;
- a common freedom, security and justice space;
- common policies;

The Euro Zone, the Schengen Area are other examples of European identity.

Europeanization, in its stead, represents a widely discussed concept, although there is no consensus on its area of applicability<sup>54</sup>.

Currently, the diversity of the interpretations given to the Europeanization concept is systematically analyzed in both theoretical and practical terms.

Generally, the concept is used in the following two contexts:

- the Europeanization of the society, the political system (the Europeanization of the domestic politics of the member states, as a result of the influence of Brussels, the Europeanization of the community policy as a result of the influence of the political or social state units, Europeanization and multi-level governance);

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<sup>53</sup>C. Birzea, *op. cit.*

<sup>54</sup> For further references concerning the concept of Europeanization, among the papers written by NSPAS affiliated scholars see A.O. Ion, *O abordare teoretică a guvernantei Uniunii Europene*, 2011 or IANCU, D, *Europenzirea administrației românești*, Polirom, 2010

- Europeanization as a phenomenon adjacent to the EU's expansion;
- Europeanization and institutionalization / constitutionalization (as a model of political integration of the EU) etc.

Therefore, irrespective of the direction of the process (top-down – i.e, from the Center to the member states – or bottom-up, but also bi-directionally), Europeanization refers to: “*the establishment and dissemination, both formal and informal, of norms, principles, beliefs or attitudes related to the impact of the political system of the Union*”<sup>55</sup>.

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<sup>55</sup> I.Gh. Bărbulescu, *Dictionar explicativ trilingv al Uniunii Europene*, Polirom, 2009

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